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4 UNITED STATES DISTRICT COURT
5 DISTRICT OF NEVADA

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7 UNITED STATES OF AMERICA,

Case No. 2:16-cr-0046-GMN-PAL

8 Plaintiff,

ORDER

9 v.

(Mot. for Joinder – ECF No. 877)

10 O. SCOTT DREXLER,

11 Defendant.

12 Before the court is Defendant O. Scott Drexler's Motion for Joinder (ECF No. 877), filed
13 October 14, 2016, and his Sealed Exhibit (ECF No. 1022), filed November 23, 2016. This Motion
14 is referred to the undersigned pursuant to 28 U.S.C. § 636(b)(1)(A) and LR IB 1-3 and 1-7 of the
15 Local Rules of Practice.

16 The Motion seeks to join the substantive arguments set forth in Defendant Micah
17 McGuire's Motions to Suppress (ECF Nos. 706, 708). However, Drexler adds two points "to the
18 jurisdictional motion to suppress." The joinder argues that (1) a magistrate judge's powers are
19 expressly limited to the federal district that appointed the magistrate judge, and (2) the absence of
20 federal jurisdiction cannot be cured by a procedural means.

21 The Fourth Amendment secures "the right of the people to be secure in their persons,
22 houses, papers, and effects against unreasonable searches and seizures." U.S. Const. amend. IV.
23 The Fourth Amendment protects reasonable and legitimate expectations of privacy. *Katz v. United*
24 *States*, 389 U.S. 347, 350–51 (1967). The Fourth Amendment protects "people, not places." *Id.*
25 at 351. Evidence obtained in violation of the Fourth Amendment, and evidence derived from it
26 may be suppressed as the "fruit of the poisonous tree." *Wong Sun v. United States*, 371 U.S. 471,
27 484–87 (1963); *United States v. McClendon*, 713 F.3d 1211, 1215 (9th Cir. 2013).

1 Because Fourth Amendment rights are personal rights, they may not be vicariously
2 asserted. *Rakas v. Illinois*, 439 U.S. 128, 133–34 (1978). To challenge the validity of the search
3 warrant, a defendant must show he personally had (i) a property interest protected by the Fourth
4 Amendment that was interfered with, or (ii) a reasonable expectation of privacy that was invaded
5 by the search. *United States v. Lopez-Cruz*, 730 F.3d 803, 807 (9th Cir. 2013) (quoting *United*
6 *States v. Padilla*, 508 U.S. 77, 82 (1993)). When a person has no ownership interest in the place
7 or thing searched, he must have a reasonable expectation of privacy to claim a violation of his
8 Fourth Amendment rights. *Lyall v. City of Los Angeles*, 807 F.3d 1178, 1187 (9th Cir. 2015).

9 The Supreme Court has enunciated a two-part test to determine whether an expectation of
10 privacy is reasonable and legitimate. *Katz*, 389 U.S. at 361. First, the individual must have an
11 actual subjective expectation of privacy, and second, society must recognize that expectation as
12 objectively reasonable. *Id.*; *Lopez-Cruz*, 730 F.3d at 807. To say a defendant lacks Fourth
13 Amendment standing is to say that “his reasonable expectation of privacy has not been infringed.”
14 *United States v. SDI Future Health, Inc.*, 568 F.3d 684, 695 (9th Cir. 2009) (citing *United States*
15 *v. Taketa*, 923 F.2d 665, 669 (9th Cir. 1991)). The defendant bears the burden of establishing,
16 under the totality of the circumstances, that the search violated his legitimate expectation of
17 privacy in the place searched or the things seized. *Rakas*, 439 U.S. at 143; *United States v. Davis*,
18 332 F.3d 1163, 1167 (9th Cir. 2003).

19 Fourth Amendment rights are personal and cannot be vicariously asserted by others whose
20 own legitimate expectation to privacy have not been invaded. Drexler lacks standing or capacity
21 to contest the validity of the warrant at issue in McGuire’s motions. He has not met his burden of
22 showing he had a legitimate expectation of privacy society accepts as reasonable in the content of
23 McGuire’s Facebook account.

24 On November 22, 2016, counsel for Mr. Drexler filed a sealed a copy of a search warrant,
25 search warrant application and affidavit, and related documents for a search warrant issued to
26 search Drexler’s Facebook account. The documents were filed as an exhibit to his “joinder to Mr.
27 McGuire’s Motion to Suppress.” (ECF No. 1022). The exhibit was filed without any express
28 assertion that Drexler intended to assert a violation of his own Fourth Amendment rights based on

1 the same arguments raised by McGuire. It contained no explanation or argument that he was
2 similarly situated to McGuire.

3 To the extent Drexler intended the exhibit to assert a violation of his own Fourth
4 Amendment rights, it was not timely filed. The case management order entered in this case on
5 April 26, 2016 (ECF No 321) established an October 3, 2016 deadline for filing pretrial motions
6 required by Rule 12 of the Federal Rules of Criminal Procedure and LCR 12(1)(b). A motion to
7 suppress is a motion which must be filed before trial in compliance with the court's case
8 management order. *See* Fed R. Crim. P. 12(b)(3)(C); LCR 12(1)(b)(8). This court has previously
9 denied untimely requests for joinder. *See* July 6, 2016 Order (ECF No. 577) (noting that "requests
10 for joinder are not a means to extend the pretrial motions deadlines established in the Case
11 Management Order"); *see also, e.g., United States v. Sperow*, 2008 WL 5054580, at *2 (D. Idaho
12 July 23, 2008) (holding that defendant could not circumvent a scheduling order by moving a month
13 later to join in his codefendants' motions). The court signed an order unsealing all search warrants
14 issued in connections with the defendants in this case on April 29, 2016 (ECF No. 346). Thus,
15 Drexler has had more than ample opportunity to file a timely motion to suppress. Filing an exhibit
16 more than seven weeks after the deadline for filing pretrial motions may not be used to avoid a
17 case management deadline imposed by the court.

18 Having reviewed and considered the matter,

19 **IT IS ORDERED**, that Drexler's Motion to Join in McGuire's Motions to Suppress (ECF
20 No. 877) is **DENIED**.

21 DATED this 1st day of February, 2017.

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24 PEGGY A. JEEN
25 UNITED STATES MAGISTRATE JUDGE
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